

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUMMIT FAMILY MEDICAL PRACTICE, P.C.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 02-3783
THE PHILADELPHIA CONTRIBUTIONSHIP	:	
INSURANCE COMPANY,	:	
	:	
Defendant.	:	

DEFENDANT'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendant, The Philadelphia Contributionship Insurance Company, by and through its attorneys, and respectfully files this Reply to the response to the Motion for Summary Judgment filed by Plaintiff. This Honorable Court is respectfully referred to the attached Memorandum.

Respectfully submitted,
MOLDAWER & MARSHALL, P.C.

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By: _____
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Counsel for Defendant

UNITED STATES DISTRICT COURT
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MEMORANDUM IN SUPPORT OF
DEFENDANT'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Plaintiff's Opposition to the Motion for Summary Judgment rests on two erroneous assertions. The first, Plaintiff alleges that the Defendant was provided "specifications of the damaged building, detailed repair estimates, and an inventory of the damaged property." This bald assertion is contained within the Affidavit of Gerald Shomer, attached as Exhibit D to Plaintiff's Opposition. This phrase is repeated throughout Plaintiff's Opposition.

Notwithstanding this bald allegation, Plaintiff offers no evidence that it, in fact, supplied information to the Defendant which would be the functional equivalent of the proof of loss. As explicitly as set forth in Section J, Plaintiff needed to state "the actual cash value ... of each damaged item of insured property and the amount of damages sustained," the cost of repairs and a number of other specific requirements. Indeed, no such information

was ever provided by the Plaintiff.

Based upon this bald allegation alone, Plaintiff argues that while it has not met the technical requirements of Section J of the applicable insurance policy, they have met the functional requirement. Assuming, arguendo, that such a position is legally valid, it would only be so, if the Plaintiff did in fact provide the functional equivalent. It is incumbent upon the Plaintiff to demonstrate that that has occurred.

Plaintiff's second fallacious argument is related. In relying on Conrad v. Omaha Property & Casualty Insurance Co., an unpublished opinion from this Court from 1995, Plaintiff argues that Pennsylvania law regarding substantial compliance is controlling in this matter. Of course, it need not be emphasized greatly that an unpublished opinion has no precedential weight. The case law offered by Defendant in its original Motion stands un rebutted. Those cases, which are adopted again here, make it clear that: (1) federal law, rather than state insurance law, solely applies to the construction of a NFIP flood policy; (2) it is the claimant's sole responsibility and burden to meet the requirements of the flood insurance policy; (3) it is not incumbent upon the Defendant insurer to remind a claimant of those responsibilities; and (4) the failure to file a proof of loss in the requisite time is unexceptionably fatal to a claimant's claim no matter the seeming harshness of that decision.

In this case, the Plaintiff has admitted its failure to file a proof of claim. It has offered no actual evidence that the

equivalent information was provided.

For these reasons, as well as those presented in Defendant's original Motion and the accompanying case law, Defendant respectfully requests this Honorable Court to grant the Motion for Summary Judgment and dismiss Plaintiff's suit with prejudice.

Respectfully submitted,
MOLDAWER & MARSHALL, P.C.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Defendant's Reply to Plaintiff's Opposition to Motion for Summary Judgment was served, by first class mail, postage prepaid, this _____ day of _____, 2003, upon:

Michael J. Saltzman, Esquire
1608 Walnut Street
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Philadelphia, PA 19103

John Marshall